

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Fishman Haygood Phelps Walmsley,
Willis & Swanson, LLP, *and all others*
similarly situated,

Plaintiffs,

v.

State Street Corporation, State Street
Bank & Trust Co., State Street Bank &
Trust Co. of New Hampshire, and
State Street Global Advisors,

Defendants.

Case No. 1:09-CV-10533 PBS

**NOTICE OF PLAINTIFF'S MOTION FOR AN ORDER
COMPELLING PRODUCTION OF ADDITIONAL WITNESS TO PROVIDE
TESTIMONY ON BEHALF OF DEFENDANTS PURSUANT TO
FEDERAL RULE OF CIVIL PROCEDURE 30(b)(6)**

Plaintiff Fishman Haygood Phelps Walmsley Willis & Swanson, L.L.P. ("Plaintiff") respectfully move this Court for an order compelling Defendants to produce an additional witness to testify on its behalf pursuant to Fed. R. Civ. P. 30(b)(6) at a reconvened session of the deposition commenced on January 6, 2010 and requiring that Defendants adequately prepare the witness to testify on the subject matters of the deposition as stated in the notice.

As set forth in Plaintiffs' memorandum in support of the motion to compel and the Declaration of Gregory Y. Porter and the exhibits thereto submitted in support of the motion, Plaintiff's motion should be granted because Defendants designated a witness who was inadequately prepared and could not provide meaningful answers to questions within the scope of the noticed topics.

WHEREFORE, for the reasons set forth more fully in Plaintiff's Memorandum, Plaintiff request that this Court deny Defendant's pending motion to dismiss and grant Plaintiff the opportunity to conduct necessary discovery.

REQUEST FOR ORAL ARGUMENT

Plaintiff believes that oral argument may assist the Court in deciding the issues presented by this motion. Plaintiff accordingly requests a hearing pursuant to Local Rule 7.1(D).

Dated: January 15, 2010

Respectfully Submitted,

By: /s/ Mark T. Johnson
Guy B. Wallace
SCHNEIDER WALLACE
COTTRELL BRAYTON
KONECKY LLP
180 Montgomery Street, Suite 2000
San Francisco, CA 94104
Tel: (415) 421-7100
Fax: (415) 421-7105

Garrett W. Wotkyns
SCHNEIDER WALLACE
COTTRELL BRAYTON
KONECKY LLP
7702 E. Doubletree Ranch Road, Suite 300
Scottsdale, Arizona 85258

Todd S. Collins
Shanon J. Carson
Ellen T. Noteware
BERGER & MONTAGUE, P.C.
1622 Locust Street
Philadelphia, PA 19103
Tel: (215) 875-3040
Fax: (215) 875-4604

Gregory Y. Porter
BAILEY & GLASSER LLP
910 17th Street, NW Suite 800
Washington, DC 20006
Tel: (202) 463-2101
Fax: (202) 463-2101

Brian A. Glasser
Michael L. Murphy
BAILEY & GLASSER LLP
209 Capitol Street
Charleston, WV 25301
Tel: (304) 345-6555
Fax: (304) 342-1110

Matthew McCue
Law Office of Matthew McCue
179 Union Ave.
Framingham, MA 01702
Tel: (508) 620-1166
Fax: (508) 820-3311

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on January 15, 2010, I caused a copy of this document to be served electronically, via the electronic filing system, on the registered participants as identified on the Notice of Electronic Filing (NEF) and by first-class US. mail on those indicated as non-registered participants.

By: /s/ Mark T. Johnson
Mark T. Johnson